

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 27, 2009 appellant, then a 31-year-old correctional officer, filed a traumatic injury claim alleging that on December 8, 2009 he tore tendons in his left shoulder while on monkey bars on a training course at work.

By letter dated July 21, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and providing dates of examination and treatment, findings, test results, a diagnosis together with an explanation as to how the December 8, 2009 incident caused or aggravated his medical condition.

In an August 4, 2011 statement, appellant described the December 8, 2009 incident. He was bench pressing 300-pound weights with the “SORT” team when a bar slipped out of his hand. Appellant ignored his pain and went to use an obstacle course. His pain worsened when he attempted to use monkey bars as he overextended his shoulder to reach a bar. When appellant swung from a bar, he heard a stretching, popping sound. He tried to jump up and catch the bar to finish the course but, was unable to do so. Appellant’s injury was witnessed by Edgardo Reveron, an employee.

In a progress note dated December 29, 2009, Dr. Suresh Kumar, a Board-certified internist, obtained a history that appellant had left shoulder pain for three weeks following a weight-lifting session. He experienced right knee pain while lifting weight and squatting. Dr. Kumar listed findings on physical examination. He advised that appellant’s left shoulder pain was getting better and there was no evidence of any deformity or functional impairment. Appellant had right knee pain and no signs of acute inflammation.

In another progress note dated December 29, 2009, Jonathan E. Agront, a registered nurse, obtained a history that appellant had left shoulder pain for two weeks and sharp right knee pain for one week. Appellant stated that his pain may be related to lifting weights. Nurse Agront listed findings on physical examination and advised that his pain was caused by a lifting movement. Also, on December 29, 2009 Margo L. Jones, a registered nurse, provided, in a progress note, a history that appellant’s complaint of left shoulder and right knee pain started one week ago. Screening for post-traumatic stress disorder and depression was negative.

In an August 22, 2011 decision, OWCP denied appellant’s claim. It found that the evidence established that the December 8, 2009 incident occurred as alleged. OWCP, however, found that appellant failed to submit medical evidence establishing a diagnosis causally related to the accepted employment-related incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United

² *Id.* at §§ 8101-8193.

States within the meaning of FECA; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS

In an August 22, 2011 decision, OWCP accepted as factual that appellant was on monkey bars on a training course on December 8, 2009 while working as a correctional officer. The Board finds, however, that the medical evidence of record is insufficient to establish that his left shoulder condition was caused or aggravated by the December 8, 2009 employment incident.

Dr. Kumar's progress note found that appellant's left shoulder pain was improving and there was no evidence of any deformity or functional impairment. He further found that appellant had right knee pain with no signs of acute inflammation. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis¹⁰ and a medical report is of

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹¹ Dr. Kumar did not explain how being on monkey bars would cause or contribute to the claimed left shoulder condition. Lacking this medical explanation, the Board finds that Dr. Kumar's progress note is insufficient to establish appellant's claim.¹²

The progress notes of Nurses Agront and Jones have no probative medical value in establishing appellant's claim. A nurse is not defined as a physician under FECA.¹³

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant sustained a left shoulder injury causally related to the accepted December 8, 2009 employment incident. Appellant did not meet his burden of proof.

On appeal, appellant contended that he sustained a left shoulder injury causally related to the December 8, 2009 employment incident for which medical treatment is necessary. For the reasons stated, the Board finds that he did not submit sufficiently rationalized probative medical evidence to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a left shoulder injury in the performance of duty on December 8, 2009, as alleged.

¹¹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹² *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹³ *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB 389 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board